

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 07-73-SLR
	:	
CHRISTOPHER WATERMAN,	:	
	:	
Defendant.	:	

DEFENDANT'S MOTION FOR BAIL PENDING APPEAL BY GOVERNMENT

Defendant, Christopher Waterman, by and through his undersigned counsel, Edson A. Bostic, Federal Public Defender for the District of Delaware, respectfully requests that this Court, pursuant to 18 U.S.C. § 3142, enter an Order releasing him on bail pending the Government's appeal of this Court's April 30, 2008 Order suppressing physical evidence in this matter.

In support of this Motion, Mr. Waterman avers as follows:

1. On May 14, 2007, a Criminal Complaint was filed against Mr. Waterman regarding his May 12, 2007 arrest, and he was arraigned before Magistrate Judge Mary Pat Thyng.

2. On June 5, 2007 a Grand Jury for the District of Delaware indicted Mr. Waterman for knowingly possessing with the intent to distribute more than five grams of a mixture and substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. § 841 (a)(1) and (b)(1)(B), knowingly carrying and possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A), and knowingly possessing a firearm that has been transported in interstate commerce to Delaware, in violation of 18 U.S.C. § 922(g)(1) and 924 (a)(2). Mr. Waterman was detained pending trial.

3. On September 21, 2007, Mr. Waterman filed a Motion to Suppress Physical Evidence and

Statements. On November 30, 2007, this Court held an evidentiary hearing on Mr. Waterman's motion, and the parties subsequently submitted post-hearing briefs in support of their respective positions.

4. On April 30, 2008, this Court entered a memorandum opinion granting Mr. Waterman's motion in its entirety, and suppressing all physical and statement evidence that resulted from his arrest. Thereafter, the Court conducted a status conference on May 8, 2008. During that conference, the Government indicated that it was reviewing the Court's decision with Main Justice to determine whether it would file a notice of appeal, because it could not proceed against Mr. Waterman since the motion to suppress was granted. On May 23, 2008, the Government filed a Notice of Appeal.

5. Mr. Waterman now files the instant motion for bail pending appeal by the Government. Pursuant to 18 U.S.C. § 3142, a defendant may be released pending trial, and the court may impose a condition or combination of conditions to reasonably assure his or her appearance as required, and that the defendant will not endanger the safety of any person or the community. Id.

6. Additionally, 18 U.S.C. § 3143(c) provides:

Release or detention pending appeal by the government. The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States under Section 3731 of this title, in accordance with section 3142 of this title, unless the defendant is otherwise subject to a release or detention order.

Except as provided in subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall—

- (1) if the person has been sentenced to a term of imprisonment, order that person detained; and
- (2) in any other circumstances, release or detain the person under section 3142.

Id.

7. Mr. Waterman believes that under the circumstances and current status of the Government's prosecution against him, this Court should consider granting his release pending determination of the Government's appeal.

8. It should be noted that Mr. Waterman, who is 26, has been incarcerated since May 14, 2007, one year since his initial arrest. He is a lifelong resident of Wilmington, Delaware, and has lived at 808 N. Monroe Street since 1992. Mr. Waterman also has a child that he supported prior to his detention.

9. If released, he will again reside with his mother at 808 N. Monroe Street in Wilmington, Delaware.

10. Upon pretrial release, Mr. Waterman will begin full-time employment at Fran & Ceil's Soul Food Restaurant in Wilmington. See Exhibit 1(confirming Mr. Waterman's employment).¹

11. During his year-long pretrial detention in this matter, Mr. Waterman has maintained a good record at Salem County Prison, where he is confined. He has also attended classes and obtained his GED.

12. Although the offenses for which Mr. Waterman is charged, particularly 18 U.S.C. § 924(c) (carrying a firearm in connection with a drug trafficking crime) ordinarily carry a rebuttable presumption in favor of detention, the Government's case and the allegations against Mr. Waterman are on much different footing because all evidence that gave rise to the offenses have been suppressed by the Court.

13. Since any evidence that would support the rebuttable presumption has been suppressed

¹Mr. Waterman's work hours would be from 11 a.m. to 6 p.m., six days a week, if permitted by the Court.

by the Court, the presumption is overcome. See United States v. Jay, F.Supp.2d 1235, 1239 (D. Oregon 2003) (Brown, J.) (“[a]ny presumption against release pursuant to 18 U.S.C. § 3142(e) is overcome because the Court suppressed the evidence”)

14. Without the rebuttable presumption, there are conditions of release that will assure Mr. Waterman’s appearance at future proceedings and the safety of the community. Such conditions may include that:

- (i) Mr. Waterman reside with his mother at 808 N. Monroe Street, Wilmington, Delaware;
- (ii) Mr. Waterman report twice weekly, in person, and/or daily, telephonically if required, to his pretrial officer;
- (iii) Mr. Waterman accept the employment offered to him at Fran & Ceil’s Soul Food Restaurant and maintain that or other employment during any period of pretrial release;
- (iv) Mr. Waterman be placed on curfew which requires him to be in his residence between 9:30 p.m. through 7:00 a.m.;
- (v) Mr. Waterman must refrain from the illegal use and/or possession of controlled substance and abstain from over-indulgence in the use of alcohol;
- (vi) Mr. Waterman be subjected to random urinalysis; and/or
- (vii) Mr. Waterman be subjected to electronic monitoring.

WHEREFORE, Mr. Waterman respectfully requests that this Court grant his Motion for Bail Pending Appeal by Government.

Respectfully submitted,

/s/ Edson A. Bostic

Edson A. Bostic, Esquire
Federal Public Defender

Attorney for Christopher Waterman

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One Customs House
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Wilmington, DE 19801
302-573-6010
ecf_de@msn.com

Dated: May 30, 2008

EXHIBIT 1

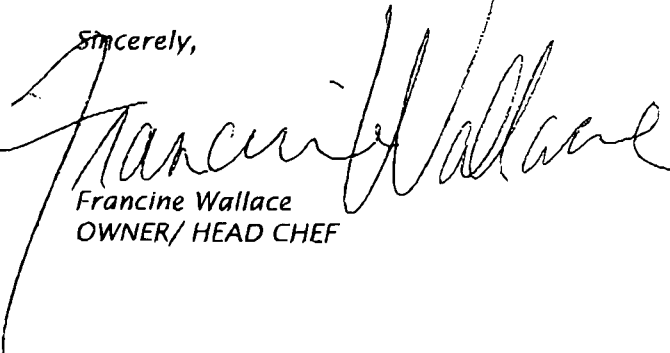
FRAN & CEIL'S SOUL FOOD RESTAURANT

May 27, 2008

Dear Sir or Madam:

My name is Francine Wallace and I am the owner of "Fran & Ceil's Soul Food Restaurant". Christopher Waterman will have a position in my restaurant assuming the trash and dish position. He will be required to work six days a week and I will be paying him \$7.00/hr. If you have any questions or concerns please feel free to contact me at (302) 543-0360. Thank you.

Sincerely,



Francine Wallace
OWNER/ HEAD CHEF

2601 NORTHEAST BLVD.
WILMINGTON, DE 19802
(302)225-6580

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FOR THE DISTRICT OF DELAWARE

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CHRISTOPHER WATERMAN,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2008, upon consideration of the Defendant's Motion for Bail Pending Appeal by Government, it is hereby **ORDERED** that the Motion is **GRANTED**.

The defendant shall be released subject to the following conditions imposed by this Court:

BY THE COURT:

Honorable Sue L. Robinson
United States District Court Judge